

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

RALPH G. MARTELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

5:06-CV-1087

(NAM)

Related Criminal Action:

5:04-CR-0563

APPEARANCES

OF COUNSEL:

D.J. & J.A. Cirando, Esqs.

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Lisa M. Fletcher, Esq.

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NORMAN A. MORDUE, Chief U.S. District Judge

DECISION AND ORDER

On March 22, 2004, a criminal complaint was filed against petitioner Ralph G. Martell which charged him with violating 18 U.S.C. §§ 2251(a) and 2257. *See United States v. Martell*, No. 04-CR-0563, Dkt. No. 1. Thereafter, a Criminal Information charging Martell with violating 18 U.S.C. § 2257(f)(1) was filed against Martell, *see id.*, Dkt. No. 32, and on November 29, 2004, Martell waived his right to an indictment on that charge and pleaded guilty before this Court to the count brought against him in the Criminal Information. *Id.*, Dkt. Nos. 31, 33.

Martell appeared for sentencing on that conviction on May 31, 2005, and on that date he was principally sentenced by this Court to a term of thirty-six months imprisonment, to be followed by a thirty-six month term of supervised release. *Id.* Dkt. No. 45. A criminal judgment

was entered against Martell on June 1, 2005. *Id.*, Dkt. No. 46.

On September 8, 2006, Martell filed, through counsel, a Motion to Vacate, Set Aside or Correct his sentence pursuant to 28 U.S.C. § 2255. *See Martell v. United States*, No. 06-CV-1087, Dkt. No. 1. The United States Attorney for the Northern District of New York thereafter filed a response in opposition to that application, *id.*, Dkt. No. 3, and on December 6, 2006, petitioner filed a reply in further support of his Motion to Vacate. *Id.*, Dkt. No. 4.

On January 11, 2008, this Court issued an amended judgment in the related criminal action. *See* 04-CR-0563, Dkt. No. 61. That amended judgment appears to this Court to have rendered moot the Motion to Vacate filed by Martell. Therefore, this Court directs the Clerk of the Court to close this case. Should petitioner believe that his Motion to Vacate has not been rendered moot by the amended criminal judgment referenced above, he shall so notify this Court no later than February 15, 2008. Included in that submission shall be the arguments in support of petitioner's assertion that this action has not been rendered moot.

WHEREFORE, based upon the foregoing, it is hereby

ORDERED, that if petitioner believes this action has not been rendered moot by the entry of the amended criminal judgment referenced above, he shall so notify this Court in a response filed herein no later than **February 15, 2008**, and it is further

ORDERED, that if petitioner fails to timely file such response, the Clerk close this action as moot for the reasons stated above, and it is further

ORDERED, that the Clerk of the Court serve a copy of this Decision and Order on the parties hereto by electronic mail.

Date: January 11, 2008


Norman A. Mordue
Chief United States District Court Judge